

COMMITTEE REPORT

MR. PRESIDENT:

The Senate Committee on Commerce and Consumer Affairs, to which was referred House Bill No. 1181, has had the same under consideration and begs leave to report the same back to the Senate with the recommendation that said bill be AMENDED as follows:

- 1 Page 1, delete lines 1 through 17, begin a new paragraph and insert:
- 2 SECTION 1. IC 8-1-2-109 IS AMENDED TO READ AS
- 3 FOLLOWS [EFFECTIVE JULY 1, 2001]: Sec. 109. **(a) This section**
- 4 **does not apply to either of the following:**
- 5 **(1) The provision of commercial radio service (as defined in**
- 6 **47 U.S.C. 332).**
- 7 **(2) A corporation covered by IC 8-1-13 or IC 8-1-17.**
- 8 **(b) This section does not apply when the violation or failure of**
- 9 **the public utility was caused by any of the following:**
- 10 **(1) Customer provided equipment.**
- 11 **(2) The negligent act of a customer.**
- 12 **(3) An emergency situation.**
- 13 **(4) An unavoidable casualty.**
- 14 **(5) An act of God.**
- 15 **(6) Circumstances beyond the control of the public utility.**
- 16 **(c) As used in this section, "public utility" includes the**
- 17 **department of public utilities created under IC 8-1-11.1.**
- 18 **(d) A public utility that violates this chapter, or fails to perform any**
- 19 **duty enjoined upon it, for which a penalty is not otherwise provided,**
- 20 **commits a Class B infraction: and every officer of a public utility**
- 21 **shall comply with every order or rule of the commission made**

1 under authority of this chapter so long as the order or rule remains
2 in force.

3 (e) Except as otherwise specifically provided in this chapter, a
4 public utility found, after notice and hearing, to have violated this
5 chapter or to have failed after due notice to comply with an order
6 or rule of the commission that was adopted under this chapter shall
7 pay to the state a civil penalty of not more than two thousand
8 dollars (\$2,000) for each violation or failure.

9 (f) For purposes of this section, a violation or failure can be
10 found only if the commission determines, after notice and hearing,
11 that the public utility has:

12 (1) failed to meet the same standard of service established by
13 commission rule in effect on January 1, 2001; or

14 (2) willfully failed to comply with a rate or service
15 requirement of a final and unappealable order of the
16 commission.

17 (g) The commission shall consider the following when
18 determining the appropriateness of the imposition or amount of a
19 civil penalty:

20 (1) The size of the public utility.

21 (2) The gravity of the violation or failure.

22 (3) The good faith of the public utility in attempting to remedy
23 the violation or achieve compliance after receiving
24 notification of the violation or failure.

25 (4) If the public utility is a nonprofit company:

26 (A) the effect of the penalty on the company's members
27 and their capitalization of the company; and

28 (B) whether the act or omission causing violation or failure
29 had been approved or requested by the company's
30 members.

31 (h) A public utility may not be subject to both a penalty under
32 this section and an agreed penalty under a commission approved
33 settlement agreement for the same violation or failure. If the
34 commission has approved a settlement agreement that includes
35 penalties or remedies for noncompliance with specific provisions
36 of the settlement agreement, the remedies provided in this section
37 do not apply to those violations or failure during the lifetime of the
38 settlement agreement.

SECTION 2. IC 8-1-2-115 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2001]: Sec. 115. The commission shall inquire into any neglect or violation of the statutes of ~~this state~~ **Indiana** or the ordinances of any city or town by any public utility doing business ~~therein~~, **in Indiana**, or by the officers, agents, or employees ~~thereof~~, **of the public utility** or by any person operating the plant of any public utility, and shall have the power, and it shall be ~~its~~ **the commission's** duty, to enforce the provisions of this chapter, as well as all other laws, relating to public utilities. Any forfeiture or penalty provided in this chapter shall be recovered and suit ~~therein on~~ **the forfeiture or penalty** shall be brought in the name of the state of Indiana ~~in the circuit or superior court where the public utility has its principal place of business~~: **by the attorney general in a court that has jurisdiction**. Complaint for the collection of any such forfeiture may be made by the commission or any member ~~thereof~~, **of the commission**, and, when so made, the action so commenced shall be prosecuted by the **attorney general**. ~~counsel~~".

Delete pages 2 through 3.

Page 4, delete lines 1 through 5.

Page 4, line 7, delete "JULY" and insert "UPON PASSAGE]:".

Page 4, line 8, delete "1, 2001]:".

Page 4, line 8, delete "As used in this section, "utility" refers to a" and insert **"This section does not apply to either of the following:**

(1) A corporation organized and operating under IC 8-1-13.

(2) A nonprofit Indiana corporation most of whose members are organized and operating under IC 8-1-13.

(b) As used in this section, "merchant power plant" means a facility within Indiana used for the:

(1) production, transmission, delivery, or furnishing of heat, light, or power; and

(2) sale of electric energy exclusively on the wholesale market; to other public utilities, energy service providers, or power marketers within or outside Indiana.

(c) A merchant power plant is subject to the jurisdiction of the commission."

Page 4, delete lines 9 through 42, begin a new paragraph and insert:

"SECTION 4. An emergency is declared for this act."

Delete page 5.

- 1 Renumber all SECTIONS consecutively.
 (Reference is to HB 1181 as reprinted February 20, 2001.)

and when so amended that said bill do pass.

Committee Vote: Yeas 9, Nays 0.

Server

Chairperson